REMARKS

Claims 1-3, 6-7, 9-10,15-16, 19-20 and 26 have been amended. New claim 30 has been added. Upon entry of this amendment, claims 1-30 will be pending. Claims 27-29 are withdrawn from consideration as being directed to non-elected matter.

Claims 1-2, 20 and 26 have been amended, as suggested by the Examiner, to clarify the term "active." Claim 20 has been further amended to depend from claim 2, instead of claim 19. Claims 1 and claims dependent therefrom have been amended to add the term "acyclic." Claim 19 has been amended to recite several species of acyclic polyols. Support for these claim amendments can be found, e.g., starting at page 3, line 29 until page 4, line 3 of the specification. Although the term "acyclic" is not explicitly recited in the instant specification, the specification at page 4, line 3 discloses several species of acyclic polyols, e.g., glycerine, butylenes glycol, pentylene glycol, propylene glycol, thus providing implicit support for this term. As noted in M.P.E.P. 2163.02, the subject matter of a claim need not be described literally in order to satisfy the written description requirement. New claim 30 has been added to recite the range of components specified in original claim 7, presently amended. Support for this new claim can be found, e.g., in original claim 7 and at page 4, lines 20-21 of the specification. No new matter has been added.

The claim amendments made herein have been made solely to expedite prosecution of the instant application and should not be construed as an acquiescence to any of the Examiner's rejections.

Rejection of Claims 1, 2, 19 and 26 under 35 U.S.C .§ 112, Second Paragraph

Claims 1, 2, 19 and 26 have been rejected under 35 U.S.C. § 112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." The Examiner objects to the use of the term "active" as a noun and suggests inserting the word "component" after the term "active." In response, Applicants have amended the rejected claims as suggested by the Examiner. None of the pending claims recites the term "active" as a noun.

Rejection of Claims 1-6, 8, 11-14, 17-20 and 22-25 under 35 U.S.C .§ 102(b)

On page 4 of the Office Action, claims 1-6, 8, 11-14, 17-20 and 22-25 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Mathur *et al.*, U.S. Patent No. 5,439,967.

Mathur *et al.* disclose lipid vesicles containing a mixture of propylene glycol stearate and at least one other amphiphile selected from the group consisting of stearyl alcohol, polyoxyethylene fatty alcohols, polyoxyethylene derivatives of sorbitan fatty acid esters having 10-20 oxyethylene groups (in particular, Polysorbate 60 (polyoxyethylene sorbitan monostearate)), among others. The lipid vesicles disclosed can additionally include at least one sterol, such as cholesterol, and a water immiscible material, such as soybean oil or vitamins or avocado oil.

This rejection has been met by amending claim 1 and the claims depending therefrom to be directed to moisturizing compositions comprising: 60%-90% water, and a plurality of bilayered microvesicles having an ethoxylated acyclic polyol ester of a fatty acid, a sterol, and a long chain fatty alcohol. Claim 19, as amended, is directed to specific species of acyclic polyols such as glycerine, butylene glycol, pentylene glycol, and propylene glycol. Mathur *et al.* disclose lipid vesicles having a mixture of polyoxyethylene derivatives of sorbitan fatty acid esters (in particular, Polysorbate 60), as well as several other components such as propylene glycol stearate. Sorbitan fatty acid esters have a cyclic ribose backbone connected to a fatty acid ester and a polyethoxy group. Polysorbate 60 is one species of a polyoxyethylene derivative of sorbitan fatty acid esters. There is no teaching or suggestion in Mathur *et al.* regarding ethoxylated polyol fatty acid esters other than sorbitan derivatives, and in particular, ethoxylated acyclic polyol fatty acid esters. Since the rejected claims, as amended, require acyclic polyol esters, these claims are novel in view of Mathur *et al.* Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. 103(a)

On page 7 of the Office Action, claims 7, 16 and 26 have been rejected as being obvious over Mathur *et al.* The Examiner acknowledges that Mathur *et al.* do not expressly disclose the ratio of ethoxylated polyol ester of a fatty acid, to sterol, to long chain fatty alcohol is in the range of about 1:0.2-0.5:1-2. However, the Examiner states that:

> It would have been obvious to one of ordinary skill in the art to adjust the ratio of avocado oil and hence the sterol content of the composition and produce the instant invention. Therefore, it is deemed merely a matter of routine optimization by one of ordinary skill in the art to adjust the amount of avocado oil in the composition to produce a mixture in the ratio of about 1:0.2-0.5:1-2 or the slightly narrower range of 1:0.3-0.4:1.2-1.7.
>
> One of ordinary skill in the art would have been motivated to do this because lowering the amount of avocado oil would have resulted in a cost saving feature for the composition.

In particular, the Examiner relies on the disclosure in Table 4 of Mathur *et al.* showing a ratio of polysorbate 60 to phytosterol to stearyl alcohol of 1:2.1:1.4 based upon about 0.3 grams of phytosterol in each gram of avocado oil (see Mathur *et al.* at Column 7, lines 36-50). The amount of avocado oil shown in Table 4 corresponds to about 40% of the lipids. Mathur *et al.* further state that the range of avocado oil is 20-60% by weight of lipids disclosed at Column 8, lines 11-14, which according to the Examiner, suggests "to one of ordinary skill in the art that less avocado oil can be used in the composition."

Applicants respectfully traverse this rejection. Claims 7 and 16, which depend from claim 1, have been amended, as described above, to be directed to moisturizing compositions comprising: 60%-90% water, and a plurality of bilayered microvesicles having the specified ratio of an ethoxylated acyclic polyol fatty acid ester, a sterol, and a long chain fatty alcohol. The claimed compositions differ not only in the ratio of the components used, but in the structure of the ethoxylated polyol esters themselves, i.e., the claimed compositions contain acyclic polyol esters, whereas the compositions disclosed by Mathur *et al.* contain cyclic sorbitan fatty acid esters. Mathur *et al.* do not teach or suggest a composition containing an acyclic polyol ester, thus failing to teach or suggest the newly added claim limitation. There is no indication whatsoever in Mathur to make compositions containing an ethoxylated acyclic polyol fatty acid ester. Accordingly, there is no motivation in Mathur *et al.* that would have led one of ordinary skill in the art to replace the cyclic sorbitan fatty acid esters disclosed with the acyclic polyol esters, as presently claimed. Therefore, the prior art discussed above fails to establish a *prima facie* case of obviousness based on the absence of the requisite motivation to arrive at the claimed invention and the failure to teach or suggest the claimed limitation.

This rejection as applied to claim 26 is also traversed. Claim 26 (as well as newly added claim 30) is directed to a composition comprising a specific ratio of ethoxylated polyol ester of a fatty acid, to sterol, to long chain fatty alcohol. According to the Examiner, it would have been obvious to adjust the ratio of avocado oil based on the teachings in Table 4 of Mathur *et al.* This Table shows a ratio of polysorbate 60 to phytosterol to stearyl alcohol of 1:2.1:1.4. The range, as presently claimed, has a lower ratio of sterol compared to the prior art, namely 0.2-0.5 compared to 2.1, respectively.

Table 4 of Mathur *et al.* discloses samples B and C, both of which have a lower concentration of 2.5 grams of avocado oil unsaponifiables (corresponding to 0.75 grams of phytosterol) (instead of 4 grams of avocado oil unsaponifiables contained in sample A), without any additional cholesterol. These samples showed undesirable properties. For example, "sample B had a cottage cheese-like consistency, while sample C had only partially hydrated lipid and clear water." Accordingly, neither of these samples was further analyzed (Column 7, lines 58-60). Only those samples containing a higher ratio of sterol, i.e., samples A and D, which contained 1.2 grams of phylosterol, and 1.25 grams of phylosterol and cholesterol, respectively, showed the desired physical properties. Therefore, a lower ratio of sterol in the compositions of Mathur *et al.* failed to produce compositions with desirable cosmetic properties. In contrast, the claimed compositions provide a superior skin feel as detected by fast absorption and good rub-in (see specification at page 1, lines 23-25). One of ordinary skill in the art will appreciate the importance of a good balance of moisturizing and aesthetic properties, particularly for cosmetic compositions. The teachings in Mathur simply do not provide the requisite motivation to decrease significantly the ratio of sterol in the compositions.

Thus, reconsideration and withdrawal of the rejection of claims 7, 16 and 26 over Mathur *et al.* under 35 U.S.C. § 103(a) is respectfully requested.

On page 8 of the Office Action, claim 10 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Mathur *et al.* in view of Patel *et al.* (U.S. Patent No. 6,309,663). Claim 10 is directed to a composition comprising an PEG-20 glyceryl laurate, sterol, and long chain fatty alcohol. Although the Examiner acknowledges that Mathur *et al.* do not expressly disclose a composition comprised of PEG-20 glyceryl laurate, Patel *et al.* is cited to supply the limitation of PEG-20 missing in the primary reference.

Applicants disagree with the Examiner's rejection. Claim 10, which ultimately depends from claim 1, has been amended, as described above, to be directed to moisturizing compositions comprising: 60%-90% water, and a plurality of bilayered microvesicles having a specific ethoxylated acyclic polyol fatty acid ester, i.e., PEG-20 glyceryl laurate, as well as a sterol, and a long chain fatty alcohol. There is no indication whatsoever in Mathur to make compositions containing an ethoxylated acyclic polyol fatty acid ester, let alone the specific PEG compound, as presently claimed. Patel *et al.* fail to make up for the deficiencies in Mathur. It discloses pharmaceutical compositions for delivery of therapeutic agents having at least two surfactants exemplified by a laundry list of surfactants, including polyethoxylated fatty acids, PEG-fatty acid diesters, mixtures of PEG-fatty acid diesters and monoesters, polyethylene glycol glycerol fatty acid esters, among others, listed as Tables 1-18. PEG-20 glyceryl laurate is one of the surfactants disclosed among a vast number of surfactants. At best, this reference provides a long list of surfactants.

Absent Applicants' invention, a person of ordinary skill in the art would not have been motivated to single out PEG-20 glyceryl laurate out of the exhaustive list of compounds disclosed by Patel *et al.* Only after Applicants' discovery of the desirable aesthetic properties of the compositions containing PEG-20 glyceryl laurate would a person of ordinary skill in the art be motivated to include PEG-20 glyceryl laurate in the compositions taught by Mathur *et al.* The Examiner is reminded that Applicants' own discovery cannot be used as a roadmap for finding an invention obvious under 35 U.S.C. §103(a). See, *W.L. Gore & Associates v. Garlock, Inc.*, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

On pages 9-10 of the Office Action, the Examiner has rejected claim 21 as being unpatentable over Mathur *et al.* in view of Schonrock *et al.* (U.S. Patent No. 6,296,857). Claim 21, which depends from claim 1 discussed above, is directed to specific sunscreen agents. None of these sunscreen agents is disclosed by Mathur *et al.* Schonrock *et al.* is cited to supply a disclosure of specific sunscreens. There is no teaching in the Schonrock relevant to the claimed invention other than a short list of metal oxides for use as sunscreens. Accordingly, this reference fails to make up for the deficiencies in Mathur *et al.* for the same reasons as those set forth above for claim 1.

Mathur, alone or in combination with Patel *et al.* and/or Schonrock *et al.*, does not teach or suggest the claimed invention. Thus, reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

Applicants respectfully submit that the claims are in condition for allowance, which is respectfully requested.

Enclosed is a $450.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 00216-625001.

Respectfully submitted,

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